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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-1283

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, (LULAC)

Petitioner,

v.

LO - VACA GATHERING CO., ET AL

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

COUNSEL FOR PETITIONER

JOSE P. OLIVARES

GEORGE KORBEL

322 W. Commerce St.
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1a) PETITIONER LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) IN ITS OWN BEHALF AND AS REPRESENTATIVE OF THE CLASS OF INJURED RATE PAYERS IS THE ONLY TRUE PARTY IN INTEREST FOR DAMAGES IN EXCESS OF TWO HUNDRED MILLION DOLLARS, *AND THEREFORE*.....

b) LULAC IS IN DIRECT ADVERSITY WITH THE CITY PUBLIC SERVICE BOARD WHICH WANTS TO KEEP OR BARGAIN WITH PETITIONERS TWO HUNDRED MILLION DOLLAR INJURY. THE CONFLICT OF INTEREST IS PERVERSE, *AND ACCORDINGLY*.....

c) PETITIONER, IN ITS OWN BEHALF AND AS REPRESENTATIVE OF THE CLASS OF INJURED RATE-PAYERS OF THE CITY PUBLIC SERVICE BOARD HAS A "RIGHT"

TO INTERVENE IN A LAWSUIT BETWEEN SAID CITY PUBLIC SERVICE BOARD, AND ITS SUPPLIER, LO-VACA, ET AL., OVER THE RATE PAYERS INJURY. IF NOT ALLOWED TO INTERVENE PETITIONER WILL BE FORECLOSED RECOVERY AFTER JUDGMENT OF OVER TWO HUNDRED MILLION DOLLARS FROM ANY OF THE PARTIES RESPONSIBLE FOR THE PETITIONERS INJURY.....

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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, (LULAC)

Petitioner,

v.

LO - VACA GATHERING CO., ET AL

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

The Petitioner, League of United Latin American Citizens, (LULAC), hereby requests the issuance of an order granting certiorari to review the judg - ment and opinion of the Texas Court of Civil Ap - peals, Fourth Supreme Judicial District, sitting in San Antonio, Bexar County, Texas, delivered on September 2, 1975 and to which the Supreme Court of the State of Texas refused Petitioners application

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for writ of error on December 17, 1975 - no reversible error. Alternatively, Petitioner - LULAC appeals from that order.

OPINIONS BELOW

Opinion No. 15474 of the Court of Civil Appeals, Fourth Supreme Judicial District, dated September 3, 1975 is reported in SW 2nd ; it is also reprinted in Appendix A, page 1a; the post card notice of the Texas Supreme Court refusal to grant the application for Writ of Error on December 17, 1975 is also reprinted. The notice of dismissal of the previous related appeal No. 15242, is reprinted in Appendix A, page 4a. The orders of the Texas District Judge, Peter Michael Curry are not officially reported; they are reprinted in the Appendix A, page 5a - 8a, along with a transcript of his open Court statements. All material records were before the Texas Supreme Court. The Court Reporter Ms. Ann Stonecipher, was unable to find her notes of the open Court statements made on November 15, 1974 by the District Court.

JURISDICTION

A. Petitioner intervened on September 16, 1974 in behalf of rate - payers to the City Public Service BOARD (CPSB) in a lawsuit between the City of San Antonio and the City Public Service Board, as De - fendant - Cross Plaintiffs, where the Plaintiffs are its gas suppliers, LO-VACA GATHERING COMPANY, COASTAL STATES GAS PRODUCING CORPO-

RATION, and OSCAR WYATT, JR., as the agent - with - interest of all said corporations, hereinafter LO-VACA, ET AL and which first filed the lawsuit on March 17, 1972 seeking declaratory judgment relief as to its contractual obligations with the City Public Service Board - City of San Antonio, hereinafter CPSB and City.

The basis for the intervention is not as champion of the "public." It is bottomed on the undisputed fact that the economic injury caused by the conversion and breach of LO-VACA, ET AL has been passed through "huge, unreasonable and illegal rate increases" to the rate-payers of the CPSB, as its consumers of gas and electricity. The judicial system of the State of Texas has kept Petitioner-LULAC out of the lawsuit by a refusal of the Supreme Court of Texas to grant a Writ of Error on December 17, 1975. This petition is filed within 90 days thereof. Jurisdiction is invoked pursuant to 28 U.S.C. Sec. 1257 (3).

B. The Court acted without giving Petitioner-LULAC an opportunity to develop a record, even though witnesses were present under subpoena, Appendix C, page 4c. This rash decision, an abuse of discretion, was a denial of "due process." Coupled with the denial of the "right and privilege," that every citizen has under the Constitution of the United States to judicial resolution and fair play the Courts action is repugnant to the U.S. Constitution. Jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. Sec. 1257 (3).

C. For the purpose of appeal and application for

certiorari, the allegations of Petitioner's Motion, "To Set Aside Order Constituting the City Public Service Board - City of San Antonio as Trustee for the Rate-Payer are held as true. " GARDNER v. TOILET GOODS ASS. 'N, 387 U.S. 167 (1967).

Under Texas Articles 2250 (2079) and 4662, Vernon's Annotated Civil Statutes, (Appendix B, page 1 Petitioner LULAC was entitled to the jurisdiction of the Court of Civil Appeals in its appeal from the May 5, 1974 order of the District Court refusing to Set Aside the Order Constituting the City Public Service Board as Trusted for the "Rate-Payer."

Failure to take Jurisdiction is a Federal question.

> "...the priveleges or immunities clause, U.S. Constitution, art. 4, Sec. 2 all fetter the Freedom of a state to deny access to its Courts however much it may regard such withdrawal of jurisdiction "the adjective law of the state,..." ANGEL v. BULLINGTON, 330 U.S. 183 (1937), citing McKNETT v. ST. LOUIS & S.F.R. CO. 292 U.S. 230 (1934)

and which continues:

> "... A state cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent." by citing KENNEY v. SUPREME LODGE, 252 U.S. 411 (1920).

The foregoing together with Petitioner's demand of the right and privilege that every citizen has under the Constitution of the United States to judicial relief and fair play, jurisdiction of the United States

Supreme Court is invoked both under 28 U. S. C. Sec. 1257 (2) and Sec. 1257 (3), because the State Court held the Statutes valid, and Petitioner - LU LAC relied on their validity to support its further demand for due process complaining of the Courts below and because the Supreme Court's silence, in view of the Statutes, perpetrated further the denial of a Federal Claim as stated in ANGEL v. BULLINGTON, supra:

> "That Court could not put a Federal claim aside, as though it were not in litigation, by the talismanic word "Jurisdiction". When an asserted Federal claim is denied, the sufficiency of the grounds of denial is for this Court to decide, TITUS v. WALLICK , 306 U. S. 282, 291, 59 S. Ct. 557, 562, 83 L. Ed. 653. Bullington could have come here, not merely by the grace of this Court, or certiorari, but on appeal as did White in WHITE v. HART , 13 Wall. 646; 20 L Ed 685.

Appeal under Sec. 1257 (2) is narrowed to the discriminatory upholding and application of State Statutes.

QUESTIONS PRESENTED

1. Whether the judiciary system of the State of Texas, District Court, Court of Civil Appeals, and Supreme Court can deny appearance pro interesse suo, under the talismanic decree "want of jurisdiction," to the party whose injury, damages, economic interest, and rights, are the basis of litiga-

tion and not deny, thereby, "due process" as guaranteed by the Constitution of the United States.

2. Whether "due process" as guaranteed by the Constitution of the United States is violated when an injured party is denied intervention, as a "matter of right," in a lawsuit where the injury, damages, economic interest, and rights of the party seeking intervention are the basis of the litigation and where the burden and practical disadvantage thereby placed on the party relegated to seek redress after judgment against the parties in the lawsuit are so great and unsurmountable that recovery is foreclosed, as a practical matter, because "disposition in his absence will impair or impede his ability to protect that interest." ATLANTIS DEVELOPMENT CORPORATION v. UNITED STATES, 379 F2d 818 (1967).

STATEMENT OF FACTS

San Antonio is a majority-minority city (52% Mexican-American, 8% Black and 40% Anglo or White.) Yet the Mexican-Americans and Blacks in San Antonio, like others through out Texas have been historically fenced out of the political process and their interests have been ignored by the elected officials, WHITE v. REGESTER 412 U.S. 53 (1973). This is especially true in San Antonio where the City Council is elected at large in a majority-place system. See generally WHITE supra 412 U.S. 765-770. The City Council is Anglo dominated and Anglo orientated.

The League of United Latin American Citizens, hereinafter LULAC, is an organization with a fifty

year history of striving to obtain civil rights for Mexican Americans. It was founded in Texas but is a truly nation-wide Civil Rights organization.

San Antonio, owns and operates a utility to provide electricity and gas to its citizens. This utility, known as the City Public Service Board, hereinafter CPSB, is the creature of rather complicated indentures and continues to be operated by a self-perpetuating board. Only one minority person has ever been selected to the board.

The Gas Shortage

San Antonio, like other cities in this nation has had its serious problems with the energy shortage. The City through CPSB has a long term, low cost contract for natural gas through 1982. In March of 1972 its supplier LO-VACA brought suit in LO-VACA GATHERING CO., et al., v. CITY PUBLIC SERVICE BOARD-CITY OF SAN ANTONIO, NO. F246-550, against the City and CPSB to increase the gas price several fold. Previously LO-VACA had sought and received approval from the Texas Railroad and Warehouse Commission[1] for a price increase. CPSB then began to raise electric and gas rates to three and four times their previous levels. As the prices rose so did public indignation and in June of 1974, the City of San Antonio and CPSB filed a coun-

---

1 In Texas, the Railroad Commission has rate setting authority on the price of natural gas as well as other petrolium products.

ter claim seeking damages of over ONE HUNDRED AND FIFTY MILLION DOLLARS for the rate hike by LO-VACA.

In a deposition J. T. Deely, the CPSB general manager admitted that the City and CPSB had no intention of making reimbursement to the rate payers (Appendix C, page 1c). Based upon this admission the League of United Latin American Citizens,LULAC, filed an intervention on September 16, 1974 on behalf of San Antonio ratepayers, the overwhelming majority of whom are Mexican American and Black, alleging inter alia, that their interests were not being protected by CPSB or the City of San Antonio. On November 15, 1974, the Texas State District Court denied LULAC intervention and in effect constituted CPSB as a trustee for the rate payers. The reporter's notes on the hearing have been mysteriously lost.

While maintaining an appeal to the Texas Court of Civil Appeals, LULAC moved in District Court to set aside the order which in effect constituted the City Public Service Board as trustee for the rate payers. (Appendix A, page 7a) The court denied this motion and went on to enjoin LULAC from further participation in the hearings. (Appendix A, pages 10a, 11a, 12a, 13a).

The appeal was dismissed for want of jurisdiction on September 3, 1975 (Appendix A, page 1a) and a subsequent Motion for Rehearing was denied on October 1, 1975. An application for Writ of Error to The Texas Supreme Court was refused on December 15, 1975 (Appendix A, page 3a).

REASONS FOR GRANTING THE WRIT

UNLESS THE WRIT IS GRANTED THE AUTHORITY OF LOCAL GOVERNMENT WILL BE SUBVERTED TO PERPETRATE A GRAVE INJUSTICE. UNDER COLOR OF LAW, THE CITY PUBLIC SERVICE BOARD AND ITS GAS SUPPLIER WILL APPROPRIATE OVER TWO HUNDRED MILLION DOLLARS BELONGING TO PETITIONER LULAC'S CLASS OF INJURED RATE PAYERS. TO AVOID SUCH PERVERSE SUBVERSION: TO QUASH CONFLICTS OF INTEREST: AND TO EXPEDITE LITIGATION, THE WRIT SHOULD BE GRANTED.

The essentials are evident. To begin with the interests of the rate payers in the litigation are substantial. No one else is paying the cost increase. By imposing and collecting the cost increase, the CPSB is actually administering the injury. The adversity and conflict of interest between the rate payer and the utility is patent.

To enhance this conflict of interest the CPSB has announced that it is not even considering the possibility of a rebate to the rate-payers(Appendix C, page 1c), and in fact most public statements by CPSB and the City of San Antonio are in justification why rebates cannot be effected. The interest of the Utility is prospective not retrospective relief. Over two hundred Million in retrospective damages belonging to the rate-payer will be 'sold out' by CPSB for prospective settlement in terms of a promised stable supply of gas at "reasonable higher rates."

The proposed Intervener, LULAC, represents over 250,000 rate-payers, better than sixty percent of whom are Mexican-American and Black. The Anglo-caucasian 'minority' is not the economic and political minority. The increase in utility rates is a small percentage of their actual income. Not so with the majority-minority.

Finally, the intervention of LULAC was filed in a timely fashion--only a few weeks after the CPSB counterclaimed for damages. In this connection it should be pointed out that the case has not advanced to trial in more than a year since the intervention, (Appendix C, page 3c). Upon order of this Court, LULAC is ready to proceed without causing delay to the parties. The studies, data and witnesses upon which LULAC will rely to prove their case have been assembled.

While no Texas Court Rule sets out the standard for intervention, decisions of the appellate judiciary in the state indicate the application of tests quite

similar to those in Rule 24 of the Federal Rules of Civil Proceedure. WILSON COUNTY v. CALHOUN COUNTY, 489 SW 2d 393; KING v. OLDS 12SW 65.

In many ways this case closely parallels TRBOVICH v. UNITED MINEWORKERS, 404 U.S. 528 (1972). In Trbovich, this Court ruled on the Secretary of Labor's capacity to represent both the interest of the Government and the interest of the union member, and said:

> "...the Secretary has an obligation to protect the "vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." WIRTZ V. LOCAL 153, GLASS BOTTLE BLOWERS ASS'N, 389 U.S. 463 475, 88 S. CT. 643, 650, 19LE d 2d 705 (1968). Both functions are important, and they may not always dictate precisely the same approach to the conduct of litigation. Even if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about the performance of "his lawyer." Such complaint filed by the member who initiated the entire proceeding, should be regarded as sufficient to warrant relief in the form of intervention under Rule 24 (a) (2).

Even more vitiating in the instant case, the CITY-CPSB have not been damaged; their credit has not

been impaired; and they have not borrowed money with interest to pay the higher cost of natural gas. On the contrary, the CITY has authorized "illegal higher rates; whereby the CITY-CPSB has inflicted the full impact of the injury to the rate-payer.

CPSB has not sought equitable relief for the rate-payer, and by its own admission wants to keep the recovery. Thus we reach the determinative question --whether Petitioner-LULAC was entitled to intervene as "of right." This, according to SAM FOX PUBLISHING CO. v. UNITED STATES, 366 U.S. 687 (1961) depended upon Petitioner-LULAC showing:

> "...both that"the representation of their interest by existing parties to the...proceeding was or might be inadequate," and that they would or might 'be bound' by the judgment 'in such proceeding.' "

The only tenable argument in support of the District Court's order is that Petitioner-LULAC can file a separate lawsuit; which indeed it has as of November 16, 1974. To show the arduous and difficult task facing the injured party, the sheriff in Harris County (Houston, Texas) has been "unable to find" Oscar S. Wyatt Jr. Even if all parties could be served by Petitioner-LULAC in the separate action, the Court would dismiss for lack of standing, or on a sworn answer alleging another lawsuit based on the same issues, or on some other gimmick of the established power structure. At the end there is the ever quashing "res judicata," stare decisis.

The foregoing cuts the veneer of words and form; it reveals the 'practical disadvantage' of pursuing a separate action against the City-CPSB or any of the other Oscar S. Wyatt Corporations before of after judgment.

It is submitted that the case at bar meets even the stringest test found in the dissenting opinion of Justice Stewart in CASCADE NATURAL GAS CORP. v. EL PASO NAT. GAS CO. 386 U.S. 129 (1967), as to the requirement for allowing intervention because of inadequate representation, and where for the proposition that a conflict of interest between the intervener and the party supposed to represent his interest is a standard allwoing intervention, Justice Stewart cites: PYLE-NATIONAL CO. v. AMOS 172 F2d 425 (C. A... 7th Cir.); MACK v. PASSAIC NAT BANK & TRUST CO., 150 F2d 474, 154 F2d 907 (C.A...3rd Cir.), and IN RE STANDARD POWER & LIGHT CORP., 48 F Supp 716 (D. C. Del.)

Petitioner-LULAC'S pleadings in intervention sets out a cause of action against both Plaintiff and Defendant, (Appendix A, page 14a).

For the proposition that a complete Failure o representation by existing parties is also a standard on which to have intervention, the Justice cites: PELLEGRINO v. NESBIT, 203F2d 463 (C.A. 9th Cir.)

For the proposition that collusion, or the likelihood of collusion between them (the existing parties) amounts to a standard on which to permit intervention, the dis senter further cites: CUTHILL v. ORTHMAN-

MILLER MACHINE CO., 216F 2d 336; (C.A...7th Cir.); PARK & TILFORD, INC. v. SCHULTE, 160 F2d 984 (CCA...2nd Cir.) cert denied; 332 U.S.761, KLEIN v. NUWAY SHOE CO., 136 F2d 986 (C.A... 2nd Cir.); MOLYBDENUM CORP. OF AMERICA INTERNATIONAL MINNING CORP. 32 F.R.D. 415(D.C. S.D.N.Y.); TWENTIETH CENTURY-FOX FILM CORP. v. JENKINS, 7 F.R.D. 197 (D.C.S.D.N.Y.)

That the only economic interest involved in the lawsuit is the interest rate of the rate-payer has never been denied. By striking its pleadings the District made allegations as to that interest true for purpose of appeal GARDNER v. TOILET GOODS ASS.'N., supra. The pleadings itself shows the conflict of interest (Appendix A, page 14a). The deposition of T. J. Deely(Appendix C, page 1c) shows the complete failure of representation, the possibility of collusion increases directly with time. The Plaintiff, Oscar S. Wyatt, Corporations, would like to settle out of Court; the Defendants, City Public Service Board-City of San Antonio would like to keep the millions that belong to the rate-payers, or worse yet ...bargain it away.

CONCLUSION

Directly and conversely, intervention by Petitioner LULAC is salutary public policy and therefore absolute as a matter of right.

WHEREFORE PREMISES, Petitioner prays that the writ be granted.

Jose F. Olivares,
Counsel for Petitioner

APPENDIX A

THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Appellant,

No. 15474, v.

LO-VACA GATHERING COMPANY, ET AL.,

Appellees.

Appeal from Bexar County.

Appellant has perfected its appeal from an order signed on May 15, overruling its motion to set aside an order of November 19, 1974, striking appellant's petition in intervention in a suit involving the contractual and legal relationships between the City Public Service Board, acting for the City of San Antonio and the public utility suppliers of natural gas to San Antonio.

Appellant attempted to appeal from the interlocutory order of November 19, 1974, but the appeal was dismissed for want of prosecution on May 28, 1975.[1] On April 22, 1975, appellant filed a motion in the trial court to set aside the order of November 19, 1974, which it designated as "Motion to Set Aside Order Constituting the City Public Service Board-City of San Antonio, as trustee for Rate-Payers." The trial court concluded that it did not have jurisdiction of said motion in that the order of November 19, 1974, was then on appeal. The court further held in the alternative that the motion to set aside the order striking the petition in intervention should be denied.

[1] This cause was docketed as our Cause No.15422.

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It is settled law that an order dismissing or striking a petition in intervention, or denying permission to intervene, may not be appealed by the intervenor before the rendition or final judgment between the original parties. Stewart v. State, 42 Tex. 242 (1875); Bryant v. Barnes, 433 S.W. 2d 786 (Tex. Civ. App.--Waco 1968, writ ref'd); Carter b. Davis, 425 S.W. 2d 442 (Tex. Civ. App.--Austin 1968, writ ref'd n.r.e.); Baronofsky v. Baronofsky. 404 S.W. 2d 683 (Tex. Civ. App.--Houston 1966, writ dism'd); Kimmel v. Lytton, 371 S.W. 2d 927 (Tex. Civ. App. Waco 1963, writ ref'd).

Appellant urges that we have jurisdiction over this appeal.

Under Article 2250, Tex. Rev. Civ. Stat. Ann. (1971), Section 2, which authorizes an appeal from an interlocutory order: "Overruling a motion to vacate an order appointing a receiver or trustee in any case." We disagree. This statute has no application here in that neither the order of November 19, 1974, nor the order of May 15, 1975, concerns the appointment of a receiver or trustee. In fact, the main suit does not even relate to the appointment of a receiver or trustee. Nor can it be said that the order of May 15, 1975, is in the nature of a temporary injunction so as to authorize an appeal from the interlocutory order under Article 4662, Tex. Rev. Civ. Stat. Ann. (1940).

The appeal is dismissed for want of jurisdiction.

Per Curiam

Opinion delivered and filed September 3, 1975.

COURT OF CIVIL APPEALS

San Antonio, Texas 78205, May 7, 1975

This is to inform you that in the Cause No. 15422

League of United Latin Americans, Appellant

vs. Lo-Vaca Gathering Company et al., Appellees

the Honorable Court of Civil Appeals today rendered judgment,

Leave to file supplemental transcript denied without prejudice to a motion for extension of time to file brief.

PLEASE PICK UP THE SUPPLEMENTAL TRANSCRIPT.

ROBERT L. COOK, Clerk

CLERK'S OFFICE - SUPREME COURT

Austin, Texas Dec. 17, 1975

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of LULAC v. LO VACA GATHERING CO. ET AL., No. B-5629

was this day refused. No reversible error.

Very truly yours,
GARSON R. JACKSON, Clerk

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Appellant,

No. 15422, v.

LO-VACA GATHERING COMPANY, et al.,

Appellees.

Appeal from Bexar County.

This an appeal by League of United Latin American Citizens (LULAC) from an order signed on November 19, 1974, striking LULAC's petition in intervention in a suit filed by Lo-Vaca Gathering Company and Coastal States Gas Producing Company against the City of San Antonio and the City Public Service Board of San Antonio, wherein a cross-action was filed by defendants. The transcript was timely filed in our Court on February 12, 1975. Appellant was granted an extension of time until April 21, 1975, within which to file its brief; however, the brief was not timely filed, nor has appellant sought to show good cause for such failure. Accordingly, we conclude that this appeal should be dismissed for want of prosecution, Rule 415, Tex. R. City. P.(1967); Rodriguez v. Flores, 426 S.W. 2d 285 (Tex. Civ. App.--San Antonio 1968, no writ). Lee v. Owen, 404 S.W. 2d 84(Tex. Civ. App.--San Antonio 1966, no writ).

The appeal is dismissed.

PER CURIAM

Opinion delivered and
filed May 28, 1975

No. F-246, 550

LO-VACA GATHERING CO.	IN THE DISTRICT COURT
VS.	150 TH JUDICIAL DISTRICT
CITY OF SAN ANTONIO AND THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO	BEXAR COUNTY, TEXAS

ORDER

On this the 15th day of November, 1974 came to be heard the Motions of COASTAL STATES GAS PRODUCING COMPANY and LO-VACA GATHERING COMPANY and OSCAR S. WYATT, JR. to strike the Petition in Intervention heretofore filed herein by the LEAGUE OF UNITED LATIN-AMERICAN CITIZENS (LULAC) and all counsel for all parties announced ready on said Motions, and:

It appearing to the Court after hearing the arguments of counsel and the presentation of authorities that the Motions to Strike the Petition in Intervention of the LEAGUE OF UNITED LATIN AMERICAN CITIZENS(LULAC) are well taken and should be GRANTED:

It is, therefore, ORDERED that the Motions to Strike the Petition in Intervention of the LEAGUE OF UNITED LATIN-AMERICAN CITIZENS (LULAC) be GRANTED and the Petition in Intervention is ordered stricken from the record in this cause.

To which action of the Court, the Intervenor, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), excepted and gave notice of appeal to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas sitting in San Antonio, Texas.

DATED this the 19th day of November, 1974.

_____

JUDGE

APPROVED:

_____

(not submitted for signature of Jose F. Olivares)

JOSE F. OLIVARES
332 W. Commerce St.
San Antonio, Texas 78205

Attorney for LEAGUE OF UNITED
LATIN-AMERICAN CITIZENS

NO. F-246,550

LO-VACA GATHERING CO.	IN THE DISTRICT COURT
VS.	150TH JUDICIAL DISTRICT
CITY OF SAN ANTONIO AND THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO	BEXAR COUNTY, TEXAS

MOTION TO SET ASIDE ORDER CONSTITUTING THE CITY PUBLIC SERVICE BOARD - CITY OF SAN ANTONIO, AS TRUSTEE FOR RATE - PAYERS

NOW COMES THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS, as Intervenor on behalf of a class of rate - payers to Defendant City Public Service Board of San Antonio, hereinafter styled LULAC, to move this Court vacate its order of November 15, 1974 striking its pleadings and for cause would show that:

I

The order of the Court issued without giving LULAC an opportunity to present evidence material to its legal posture. Without such evidence there are not before the Court the elements necessary and required for the exercise of its judicial discretion.

II

The order of the Court was signed without giving

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Counsel for LULAC an opportunity to approve or disapprove the order, as to form, at least.

III

The import of the Court's order as well as the open Court statements made in connection therewith constitute the City Public Service Board - City of San Antonio as trustees for the justiciable interest of the rate - payers represented by LULAC.

Such appointment is unlawful and irregular. It is unlawful, because neither statute, ordinance or common law authorize it. The City Public Service Board is a proprietary instrumentality of the City of San Antonio as authorized under Article 1111 to 1118, Vernon's Anon. Civ. Stat.

The City Public Service Board was created by contract, subject to the indenture Act of 1939. It is governed by a five member board of trustees having a first duty to bond holders and other creditors of the City Public Service Board. To carry out this duty the Board of Trustees has statutory authority over the rate - payers. As a matter of law, it cannot abandon its duty nor abdicate the authority to be a Court appointed trustee for the rate - payers represented by LULAC. The City of San Antonio is bound by its contract and limited by statute. The conflict of interest is clear and unequivocal.

IV

Should the Court not vacate its order, which in

effect appoints the City Public Service Board of San Antonio as Trustee for a justiciable interest against itself, then the Court is asked to modify its order, to require its appointed trustee to place in escrow any monies that it may receive by judgment or settlement in this cause. In connection therewith the rate - payer is entitled to have The Court assess a bond in its favor from said trustee and the same should be in the amount of at least FIFTY MILLION DOLLARS.

WHEREFORE PREMISES LULAC prays that this motion be set and upon hearing thereof, its order entered on November 15, 1974 be vacated and that LULAC'S pleadings on behalf of the injured rate - payer's class be reinstated and allowed to assert all its rights under the law and equity as well as for all other and further relief as the Court may decree.

Respectfully submitted,

Jose F. Olivares
Attorney at Law
332 W. Commerce St.
San Antonio, Texas 78205
Tel. No. (512) 227-5393

LO-VACA GATHERING CO. AND COASTAL STATES GAS	IN THE DISTRICT COURT
VS.	166 TH JUDICIAL DISTRICT
THE CITY OF SAN ANTONIO AND CITY PUBLIC SERVICE BOARD OF SAN ANTONIO	BEXAR COUNTY, TEXAS

STATEMENT OF FACTS
ON
HEARING ON MOTION TO SET ASIDE ORDER

BE IT REMEMBERED that heretofore, to-wit; on the 6th day of May, A.D., 1975, came to be heard the above-entitled cause, before the Honorable Peter Michael Curry, Judge, 166th Judicial District Court, Bexar County, Texas.

(In Part)

WHEREUPON, the following evidence was adduced and proceedings had in connection therewith, to-wit:

THE COURT: Not only that, but the fact that this Court could order that damages were received, this Court could order whatever it wanted to, despite what the bond holders or anybody else has to say, because there is absolutely no prohibition insofar as

this Court is concerned and insofar as the law is concerned to prohibit this Court after the judicial process has been completed to designate the money to go in any direction. As far as I am concerned, that's the law, and the fact that the bond holders have an interest, or they come in first, or what have you, as far as I am concerned, there is no prohibition insofar as damages are concerned.

MR. WOOD: I think that's correct, Your Honor. I would add, the City Public Service Board does not represent the bond holder; the bond holder is represented by the corporate trust indenture, the Harris Trust and Savings Bank of Chicago.

THE COURT: Irrespective of whatever I say, with the judicial process completed, if damages are recovered, this Court can designate what's going to happen to those damages.

Therefore, as far as I'm concerned, the Motion to Set, I haven't designated the City of San Antonio or the Public Service Board as trustees, as my order clearly indicates on the order that I signed on the 19th of November, 1974.

So as far as I'm concerned, in the first place, you are correct. I have no jurisdiction; but if I have jurisdiction I will deny the Motion to Set Aside. Furthermore, I will not entertain any further pleadings of any nature from these movants.

NO. F-246,550

LO-VACA GATHERING COMPANY, ET AL.	IN THE DISTRICT COURT
V.	166TH JUDICIAL DISTRICT
CITY OF SAN ANTONIO	BEXAR COUNTY, TEXAS

ORDER

On the 6th day of May , 1975, came on to be heard the Motion of the League of United Latin American Citizens (LULAC) entitled "Motion to Set Aside Order Constituting the City Public Service Board - City of San Antonio, as Trustee for Rate - Payers," said Motion being in effect an attempt by LULAC to reenter this case and to set aside this Court's Order dated November 19, 1974, granting Motions to Strike the Petition in Intervention heretofore filed herein by LULAC; and all counsel for all parties announced ready on said Motion, and the Court, having considered the Motion, Reply thereto, files and records in the case and argument of counsel, finds and rules as follows:

The Court fully heard and determined the matter of intervention of LULAC in this lawsuit at a hearing on November 15, 1974, and ordered that its petition in Intervention herein, on behalf of itself and others should be stricken. LULAC has appealed from the Order of this Court dated November 19, 1974, grant-

ing Motions to Strike the Petition in Intervention heretofore filed herein by LULAC, which appeal is pending in the Court of Civil Appeals for the Fourth Supreme Judicial District in Cause No. 15422, League of United Latin American Citizens v. Lo-Vaca Gathering Company, et al., and that during the pendency of such appeal this Court is without jurisdiction to entertain the Motion of LULAC with regard to said Order, and it is accordingly so ORDERED.

In the alternative, and only in the event this Court has jurisdiction over the Motion of LULAC to set aside this Court's Order dated November 19, 1974, it appears to the Court that the matter of LULAC's intervention herein has been fully considered not only on November 15, 1974, but also at the hearing herein May 6, 1975, and that the instant Motion to Set Aside Order and reenter the case should be, and the same is hereby, in all things, DENIED, and it is accordingly so ORDERED.

It further appearing to the Court that the matter of intervention by Movant now herein has been fully and completely considered and determined by this Court on two occasions, no further motions or pleadings by Movant of any kind will be entertained, and it is accordingly so ORDERED.

SIGNED and ENTERED this 15th day of May, 1975.

_____

Judge Presiding

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NO. F-246,550

LO-VACA GATHERING COMPANY AND COASTAL STATES GAS PRODUCINGCOMPANY
PLAINTIFFS,

IN THE DISTRICT COURT

VS.

150TH JUDICIAL DISTRICT

CITY OF SAN ANTONIO - CITY PUBLIC SERVICE BOARD
DEFENDANTS.

BEXAR COUNTY, TEXAS

INTERVENOR'S FIRST ANSWER
JOINDER IN COUNTER CLAIM
AND SEPARATE COUNTERCLAIM

TO THE JUDGE OF SAID HONORABLE COURT :

NOW COMES THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), an organization comprised of members who are residents of San Antonio, Bexar County, Texas and rate - payers of the City Public Service Board of San Antonio and being an organization duly chartered by State of Texas and in behalf of all its members and of all persons similarly situated, and adequately represented as a class by said membership, all of whom are hereinafter styled intervenor, and who here and now files this Answer and Joinder in Counterclaim in the above styled and numbered cause, answering the Petition filed herein by Lo-Vaca Gathering Company and Coastal States Gas Corporation, and Oscar S. Wyatt,

Jr., personally and Chairman of the Board of Directors and Chief Executive Officer of Coastal States Gas Corporation and subsidiaries. Intervenor further asserts a counterclaim against all parties to the extent that damages and other relief rightfully belongs to it and the class it represents, and thereto Intervenor respectfully would show:

I
(ommitted)

II through V
(ommitted)

SEPARATE AND INDEPENDENT CAUSES OF ACTION

As representative of a class, Intervenor now asserts a separate Counter- Claim against Plaintiffs and Defendants, jointly and separately, for their failure to protect the interests of the rate payer where the duty to protect such interest is imposed by law under the respective franchises of Plaintiffs and Defendants and particularly where Plaintiff has breached its contractual duty to deliver natural gas in accordance with a written contract between Plaintiff and Defendant for the benefit of the Class represented by Intervenor, and such breach and acquiescence in such breach has resulted in direct damages to Intervenor, individually and as representative of his Class. Intervenor further restates all allegation in Defendants Counter-Claims that support the charge that Plaintiffs have sold to third parties huge natural gas reserve that contractually belonged to Intervenor's class and

POOR COPY

such sales are not only a breach of trust and the basis for breach of contractual duties, but give rise in equity to a cause of action in replevin which allows Intervenor's class to recover the volume of natural gas actually diverted or a sum of money sufficient to purchase at current market value, and from wherever found, an amount equal to the volume of natural gas actually diverted from Intervenor's class.

Art. 4662. 4644–5–6 Appeals

Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or over-ruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Civil Appeals by filing the transcript in such case with the clerk of the said appellate court not later than twenty days after the entry of record of such order or judgment. Such appeal shall not have the effect to suspend the order appealed from unless it shall be so ordered by the court or judge who enters the order. Such case may be heard in the Court of Civil Appeals or Supreme Court on the bill and answer and such affidavits and evidence as may have been admitted by the judge of the court below. If the appellant desires to file a brief in said appellate court he shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. Such case may be advanced in the Court of Civil Appeals or Supreme Court on motion of either party, and shall have priority over other cases pending therein. Acts 1909, p. 354; Acts 1907, p. 206; Acts 1919, p. 22.

Art. 1820. [1590] [996] Judgment conclusive on facts

The judgments of the Courts of Civil Appeals shall be conclusive in all cases on the facts of the case. Acts 1895, p. 79; G.L. vol. 10, p. 809.

Art. 2250. [2079] Appeal from interlocutory order

An appeal shall lie from an interlocutory order of the District, County Court at Law, or County Court:

1. Appointing a receiver or trustee in any cause.

2. Overruling a motion to vacate an order appointing a receiver or trustee in any case.

Acts 1917, p. 379; Acts 1943, 48th Leg., p. 456, ch. 305, § 1.

Art. 1819. [1589] [996] Jurisdiction defined

The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction with the amount in controversy or the judgment rendered shall exceed One Hundred Dollars ($100) exclusive of interest and costs; provided, however, that if any Court of Civil Appeals having jurisdiction of a cause, matter or controversy requiring immediate action shall, by reason of the illness or absence or unavailability of at least two (2) of the Judges thereof, be unable to take such immediate action, then the nearest available Court of Civil Appeals may take such action as may be required in regard to said cause, matter or controversy under such rules as the Supreme Court may prescribe. As amended Acts 1957, 55th Leg., p. 1279, ch. 426, § 1.

APPENDIX C

IN THE 166TH DISTRICT COURT
OF BEXAR COUNTY, TEXAS

LO-VACA GATHERING COMPANY * ET AL.,

VS. * No. F-246,550

CITY OF SAN ANTONIO *

ORAL DEPOSITION

OF

J. T. DEELY

J. T. DEELY — THE WITNESS

EDDIE MORRIS, NOTARY PUBLIC — COURT REPORTER

ORAL ANSWERS AND DEPOSITIONS of the witness, J. T. Deely, who resides in San Antonio, Bexar County, Texas.

(In Part, all of page 64)

Q. All right. Present customers or the customers that paid it is one possibility; but you say that would be an impossibility?

A. I have never known of its being done, where rebates were ordered by commissions, if you understand what I am trying to say.

Q. All right. And another possibility would be a rebate to the customers at the time of the rebate. J.D.

A. No, there would be no back rebate. J.D.

Q. A third possibility would be reductions in bonding in the future?

A. Yes.

Q. And what would be your capital expenditures that you spoke to Mr. Dubose about, I take it?

A. Right.

Q. All right. Any other possibilities?

A. Well, it could go to the City of San Antonio for the City operations.

Q. Any other possibility?

A. It could be refunded to a particular class of customer, as such. We have talked about customers in general terms and I think we should talk about a particular class customer.

Q. Like what?

A. Like industrial customers; industrial commercial customers.

San Antonio, Texas

That CPS suit

Dear Paul:

I, for one, couldn't help but be moved at the rapidity with which the CPS legal beagles moved to overturn the payback of passthrough charges (ordered by Dist. Judge Jim Onion) to local school districts and other tax supported agencies.

Meanwhile they let the "rape of San Antonio" by Oscar Wyatt, Coastal States and Lo Vaca seemingly go unattended.

I begin to wonder if there might be too much friendliness between certain high moguls in CPS and our beloved natural gas suppliers.

How many citizens know that most out-of-state users of our Texas produced natural gas pay half or less the price we do for this same product due to federal regulation?

Why can't CPS move faster in our suit against Coastal States.

Leo J. Warren, 25303 Ima Ruth Parkway, city.

AFFIDAVIT

Before me, the undersigned authority, appeared Dr. Jose San Martin, known to me as a credible person, over age 18, and after first being sworn by me upon his oath declares:

On November 15, 1974, being then a member of the governing Council of the City of San Antonio, Texas, I was subpoened by the League of United Latin American Citizens to appear at a hearing wherein before I, or any other witnesses there present were called, the League of the United Latin American Citizens was denied intervention in a lawsuit styled LO-VACA GATHERING CO. V. CITY OF SAN ANTONIO AND THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO, No. F-246, 550. All of the foregoing is from my own personal knowledge.

Dr. José San Martin

Dr. José San Martin

SWORN TO AND SUBSCRIBED BY ME, on this the 4th day of March, 1976.

Notary Public in and for
Bexar County, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motions has been mailed to the following attorneys by Certified Mail, Return Receipt Requested on this the 6th day of March, 1976.

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Mr. William E. Miller Steptoe and Johnson 1250 Connecticut Ave. N.W. Washington, D.C. 20036 c/o. Mr. James Baskin, Jr. Mathew, Nowlin, MacFarlane & Barrett 1500 Alamo National Bank Bldg. San Antonio, Texas 78205	CITY PUBLIC SERVICE
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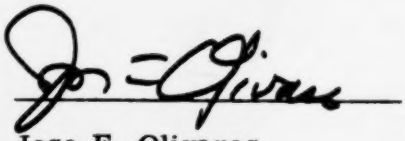

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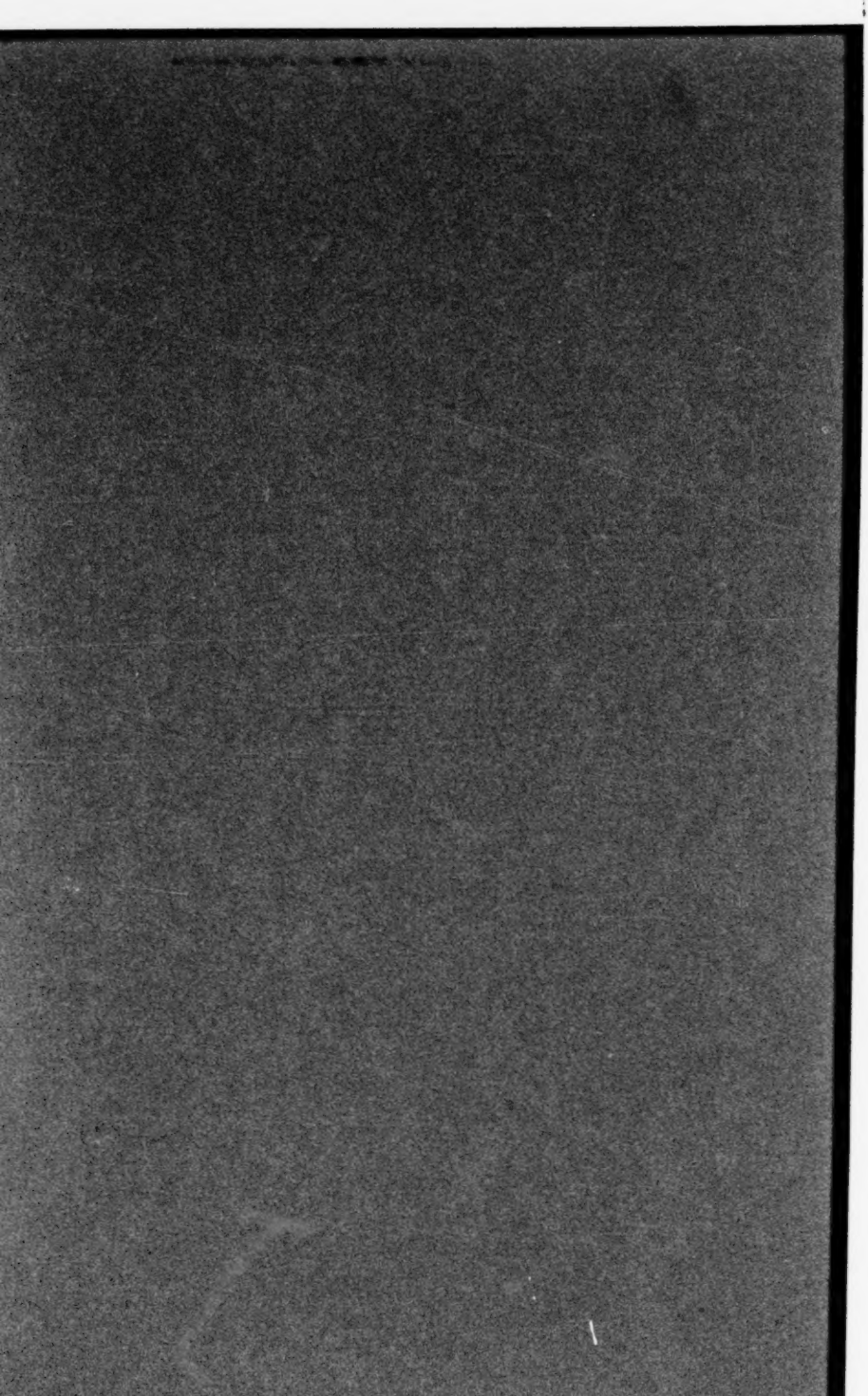

Supreme Court, U. S.
FILED
APR 7 1976
MICHAEL RODAK JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1283

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Petitioner,

V.

LO-VACA GATHERING COMPANY, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

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Attorneys for City of San Antonio Through City Public Service Board of San Antonio

Of Counsel:
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No.....

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

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In the Supreme Court of the United States

OCTOBER TERM 1975

No.....

LEAGUE OF UNITED LATIN AMERICAN CITZENS,

Petitioner,

V.

LO-VACA GATHERING COMPANY, ET AL.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

The City of San Antonio, acting by and through the City Public Service Board of San Antonio (San Antonio), hereby opposes the Petition for Writ of Certiorari filed herein by the League of United Latin American Citizens (LULAC) and Petitioner's alternative appeal, and requests this honorable Court to deny certiorari to review the judgments and opinion of the Texas Appellate Courts on grounds that the decisions of those Courts were properly based upon the well-settled procedural rules of Texas jurisprudence and there are no federal questions here involved.

STATEMENT OF THE CASE

The lawsuit in which Petitioner LULAC attempted to intervene was originally filed as a declaratory judgment action in March, 1972, against the City of San Antonio (San Antonio),

acting by and through its municipally owned gas and electric utility, the City Public Service Board, by the City's gas suppliers, Coastal States Gas Producing Company (Coastal) and Lo-Vaca Gathering Company (Lo-Vaca). Lo-Vaca Gathering Company, et al. v. City of San Antonio, No. F-246,550, 166th Judicial District Court of Bexar County, Texas. San Antonio's Answer and Suit by Counterclaims, filed April 21, 1972, as amended July 22, 1974, seeks damages for breach of contractual and public utility pipeline duties by these gas suppliers.

LULAC attempted to intervene in this State-court action by filing, on September 16, 1974, a pleading alleging that it is comprised of and respresents "residents of San Antonio" and "ratepayers of the City Public Service Board of San Antonio." Motions to Strike the Intervention were heard before and granted by the Bexar County District Court on November 15, 1974. LULAC appealed this Order to the Texas Court of Civil Appeals in LULAC v. Lo-Vaca Gathering Company, et al., Cause No. 15,422. The appeal was dismissed in May, 1975, because of LULAC's failure to file a brief.

On April 22, 1975, LULAC filed a "Motion to Set Aside Order Constituting the City Public Service Board–City of San Antonio, as Trustee for Ratepayers" in the District Court, by which Motion LULAC sought to reenter the cause below and to set aside the District Court's Order of November 19, 1974, striking its Original Petition in Intervention. The District Court, after a hearing held on May 6, entered an order denying LULAC's Motion on May 15, 1975.

LULAC appealed this Order to the Court of Civil Appeals in Cause No. 15474, and on September 3, 1975, that Court handed down an opinion dismissing the appeal for want of jurisdiction, since (1) an order dismissing a petition in intervention may not be appealed by the intervenor prior to final judgment between the original parties and (2) the statutes urged by LULAC authorizing interlocutory appeals were not applicable.

On October 28, 1975, LULAC appealed to the Texas Supreme Court from the Court of Civil Appeals judgments in

both Causes 15422 and 15474. That Court on December 17, 1975, handed down an order refusing LULAC's appeal with the notation that no reversible error had been committed by the Court below.

ARGUMENT

There are no federal questions involved. The basis for the dismissal of LULAC's appeal for want of jurisdiction is well-settled under Texas law and is the type of local matter, not based upon federal grounds, with which this Court has refused to concern itself. See Bullock v. Florida, 254 U.S. 513 (1920); Nickel v. Cole, 256 U.S. 222 (1921); Wolfe v. North Carolina, 364 U.S. 177 (1960).

The rulings of the Texas Court of Civil Appeals and the Texas Supreme Court are supported by well-settled principles of Texas procedural law. In Texas, an order dismissing or striking a petition in intervention, or denying permission to intervene, may not be appealed by the intervenor before the rendition of final judgment between the original parties. Stewart v. State, 42 Tex. 242 (1875); Bryant v. Barnes, 433 S.W. 2d 786 (Tex. Civ. App. 1968, writ ref'd); Mueller v. Banks, 302 S.W. 2d 447 (Tex. Civ. App. 1963, writ ref'd).

Likewise, LULAC's attempts to characterize the State district court's order as one of appealable nature are without merit. The statutes LULAC cites, Articles 2250 and 4662, Vernon's Texas Civil Statutes Annotated, which allow interlocutory appeals from orders granting injunctive relief and orders overruling motions to vacate the appointment of receivers or trustees, are clearly inapplicable to an order dismissing an intervention. Petitioner's request for a writ of certiorari from this Court therefore has no merit and should be denied.

Nor has the issue of the validity of any Texas statute ever been raised in this cause, either as to any asserted repugnance to the Constitution, laws or treaties of the United States, or

otherwise. Hence, there is no appeal jurisdiction by this Court under 28 U.S.C. §1257(2).

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this Court deny Petitioner's "Petition for Writ of Certiorari to the Supreme Court of Texas" and its alternative appeal from the judgments of the Courts below.

Respectfully submitted,

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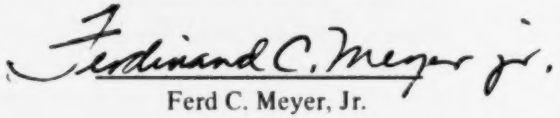

Ferd C. Meyer, Jr.

Of Counsel:

Steptoe & Johnson

Matthews, Nowlin, Macfarlane & Barrett

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Brief in Opposition to "Petition for Writ of Certiorari to the Supreme Court of the State of Texas" were served on opposing counsel in accordance with the Revised Rules of the Supreme Court on this 5th day of April, 1976.

Ferdinand C. Meyer, Jr.